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SOURCE Sotsialisticheskaya zakonnost', No 2, 1949LAW BOOK ATTACKED; HELD PROSECUTOR, DEFENDANT EQUALS

Prof K. Mokichev

The Juridical Publishing House of the USSR Ministry of Justice has just published M. Shifman's book, Prokuror v ugolovnom protsesse (The Prosecuting Attorney in Criminal Proceedings). It was edited by Prof I. Golyakov and represents the author's doctoral thesis. Shifman analyzes the fundamental problems connected with a Soviet prosecuting attorney's work as state prosecutor in a criminal court. The material is divided into four sections: (1) important stages in development of the state indictment, (2) basic principles of state indictment in a Soviet court, (3) trial of criminal cases, and (4) the state prosecutor's address.

The author ignores the experience and practice of prosecutors' work. He says nothing about prosecutors being organizers of the struggle against criminality. It is impossible to speak only of addresses in court in this matter, as the author does.

The author sets forth no connection between the prosecutor's work and general economic and political tasks. This is clearly apolitical. In his book Shifman introduces a "theory" of the state indictment in a Soviet court in which he terms such an indictment a criminal action, a "theory" which is completely unknown in Soviet law books. There are absolutely no grounds for the author's statement that the term "criminal action" prejudices the rights of citizenship in Soviet legal literature.

The author describes the relations between the Soviet prosecuting attorney and the offender in the trial as a "legal dispute." Such an understanding of the struggle with criminality is apolitical, formal, and leads to negation of the class struggle.

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A Soviet prosecuting attorney does not seek recognition by the court of the right of state punishment. This right is indisputable. The prosecuting attorney is an accuser, not a plaintiff, and he does not request, but demands, on behalf of the state, punishment of criminals. On the strength of this position he cannot be placed in the position of plaintiff and completely on a level with the defendant as Shifman so places him.

Soviet law and legal practice does not know "criminal action," and Soviet jurisprudence cannot accept it.

In identifying basic principles in the work of the organs of the prosecuting magistracy, Shifman writes: "We are opposed to the principle of expediency and in favor of the principle of legality."

In setting forth this position, the author contrasts the principle of legality to the principle of expediency and in so doing makes a gross political error and distorts the Lenin-Stalin conception of legality.

The author does not understand the simple fact that in the Soviet society there can be no kind of separation or gap between legality and expediency because the latter is embodied in the former. Therefore, socialist expediency is the true entity and real form and contents of legality.

In the author's opinion, the prosecuting attorney must take the evidence into court, not discussing the nature of the law infringement, but only the purely formal charges. Then "the accused can argue the expediency of his actions which formally constitute the offense." Consequently, the Soviet prosecuting attorney would be forced to proceed not from the nature of the case, not from the nature of the law infringement, but from charges "formally constituting the offense."

Such a conception of legality in the work of the organs of the prosecuting magistracy pushes the prosecuting workers to a formal and bureaucratic attitude towards their duties.

Shifman's understanding of the principle of expediency in the the work of the courts is also distorted. The author recognizes the right of the defendant to argue "the expediency of his actions," and confirms the right of the court to give the defendant "a suspended sentence or to return a verdict of not guilty." It appears that, having been convinced of the expediency of the law infringement, the court lessens the penalty or exonerates the accused.

This is a distortion of the principle of legality and expediency, and radically contradicts Lenin's teachings on socialist legality.

The only difference the author sees between the Soviet prosecuting magistracy and a bourgeois prosecuting magistracy is that the Soviet prosecuting magistracy effects direction of legality not only in court, but also in the work of administrative organs. The main difference between the two is not this, but the fact that the Soviet prosecuting magistracy, as an organ of the socialist state, is an instrument of development of Communism.

The author speaks only objectively about indictments of bourgeois magistracies. He only describes this function, and does not reveal the character and class direction of the work of the prosecuting attorney in the contemporary bourgeois state. Such a description is formal and has nothing in common with Marxism-Leninism.

Shifman misrepresents and incorrectly understands the principle task and role of the Soviet prosecuting attorney in the struggle with criminality.

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He writes: "The principle task of the prosecuting attorney is not simply to prosecute, but to help the court to return a correct, proved, and conclusive verdict."

Such a conception of the task of the organs of the prosecuting magistracy is politically incorrect and misinterprets the nature of the magistracy as an organ of the dictatorship of the working class.

The Soviet prosecuting attorney is, above all, a prosecutor on behalf of the state. His principal function is to publicly expose criminals. This not only guarantees punishment of criminals but also educates the working masses and creates an atmosphere of contempt and intolerance for thieves and plunderers of socialist property and for all other criminals.

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